

- g. the economic impact of the penalty on the violator, and
- h. any other matters as justice may require.

139. Based upon an evaluation of the facts alleged in Count III of this Complaint, and the factors listed in paragraph 138 above, Complainant proposes that the Administrator of U.S. EPA assess a civil penalty against Respondent of \$26,386 for the violations identified in Count III.

140. In determining the proposed penalty, Complainant considered the economic benefit that Respondent received from the violations. The penalty must be sufficient to prevent the violator from gaining a monetary benefit from avoiding or delaying the expenditures that are necessary to comply. Based on presently available information U.S. EPA determined that the economic benefit to R & F was \$466. This amount may be modified based on U.S. EPA's receipt of additional information.

141. In calculating the proposed penalty, Complainant considered the seriousness of the violations. This consideration took into account the storage capacity of Respondent's facility of at least 5,995 gallons oil during the July 1999 inspection by U.S. EPA, its potential to impact a navigable waterway - Baby Creek, the Detroit and Rouge Rivers - and the degree to which Respondent violated the regulations at 40 C.F.R. Part 112.

142. In calculating the proposed penalty, Complainant considered the degree of Respondent's culpability. This consideration took into account Respondent's sophistication and Respondent's knowledge of the applicable regulations.

143. In calculating the proposed penalty, Complainant considered any other penalty paid by Respondent for the violations alleged in Count III of this Complaint. Complainant is not aware of any such penalty or payments.

144. In calculating the proposed penalty, Complainant considered Respondent's history of prior violations. Complainant has not increased the proposed penalty based on this factor.

145. In calculating the proposed penalty, Complainant considered the nature, extent, and degree of success of any efforts of Respondent to respond to the violations after the inspection. The penalty reflects that the Respondent did not attempt to remedy the violation identified in this Count. It also reflects the delays in the Respondent's response and its failure to act without further direction by the Complainant.

146. Complainant considered the economic impact of the proposed penalty on Respondent's business. Based on the best information available to Complainant at this time, the proposed penalty reflects a current presumption of Respondent's ability to pay the penalty and to continue in business.

147. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes further bona-fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

148. Respondent may pay the proposed penalty presented in Count III by certified or cashier's check payable to the "Oil Spill Liability Trust Fund," by delivering the check and a copy of this Complaint to:

US Coast Guard Oil

P.O. Box 650545
Pittsburgh, Pa. 15264-0545

Beth Henning
Oil Planning and Response Section
Emergency Response Branch (SE-5J)
U.S. EPA, Region 5
77 west Jackson Boulevard
Chicago, Illinois 60604-3590

Richard Clarizio
Assistant Regional Counsel
Office of Regional Counsel (C-14J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Under Section 22.45 of the Consolidated Rules, you may not submit this penalty payment until 10 days after the close of the public comment period. If you intend to resolve Count III of this Complaint under this paragraph, please contact Richard Clarizio to determine the penalty payment date.

C. COUNTS IV-VII RCRA

149. Complainant proposes to assess Respondent a civil penalty of \$166,450.00 for the violations alleged in Counts IV-VII of this Complaint in the following manner:

- a. Count IV - \$24,750.00
- b. Count V - \$104,500.00
- c. Count VI - \$33,000.00
- d. Count VII - \$4,400.00

150. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic

basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation of Subtitle C of RCRA occurring or continuing on or after January 31, 1997.

151. Complainant determined the proposed civil penalty according to RCRA Section 3008, 42 U.S.C. § 6928. In assessing a civil penalty, the Administrator of U.S. EPA must consider "the seriousness of the violation and any good faith efforts to comply with applicable requirements." Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). Complainant has considered the facts and circumstances of this case with specific reference to U.S. EPA's 1990 RCRA Civil Penalty Policy and any amendment thereto. A copy of that penalty policy is available upon request. It provides a consistent method of applying the statutory penalty factors to this case.

152. The Complainant proposes that the Administrator assess a civil penalty of \$166,450.00 for the violations alleged in Counts IV-VII of this Complaint, as further explained in Attachment 1, "Penalty Summary Sheet."

153. Respondent may pay the penalty identified in paragraph 152 by certified or cashier's check, payable to "Treasurer, the United States of America," and remit to:

U.S. Environmental Protection Agency, Region 5
P.O. Box 70753
Chicago, Illinois 60673

A copy of the check shall be sent to:

Richard Clarizio
Office of Regional Counsel (C-14J)

U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

George Opek
Waste, Pesticides & Toxics Division (DE-9J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

A transmittal letter identifying this Complaint shall accompany the remittance and the copy of the check.

VI. COMPLIANCE ORDER RCRA COUNTS IV-VII

154. Based on the foregoing, Respondent is hereby ordered pursuant to authority in 3008(a) of RCRA, 42 U.S.C. § 6928(a), and § 22.37(b) of the Consolidated Rules to comply with the following requirements immediately upon the effective date of this Order:

A. Respondent shall achieve and maintain compliance with all requirements and prohibitions governing the treatment, storage or disposal of used oil applicable to generators, codified at or incorporated by MAC § 299.9810, (40 C.F.R. Part 279) at the R & F facility.

B. Respondent shall notify U.S. EPA in writing upon achieving compliance with this Order within 15 calendar days after the date it achieves compliance. If Respondent has not taken or completed any requirement of this Order, Respondent shall notify U.S. EPA of the failure; its reasons for the failure; and the proposed date for compliance within 10 calendar days after the due date set forth in this Order.

C. Respondent shall submit all reports, submissions, and notifications required to comply with this section VI to the United States Environmental Protection Agency, Region 5, Waste, Pesticides & Toxics Division, Enforcement and Compliance Assurance Branch, Attention: George Opek (DE-9J), 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. (312) 886-1423.

VII. OPPORTUNITY TO REQUEST A HEARING

155. Sections 113(d) (2) of the CAA, 42 U.S.C. § 7413(d) (2), 311(b) (6) (B) (ii) of the CWA, 33 U.S.C. § 1321(b) (6) (B) (ii), and 3008(b) of RCRA, 42 U.S.C. § 6928(b) and the Consolidated Rules provide to any person against whom the Administrator proposes to assess a penalty an opportunity to request a hearing on the proposed penalty. Accordingly, you have the right to request a hearing to contest any material fact alleged in the Complaint, to contest the appropriateness of the amount of the proposed penalty, or to request a judgment in your favor as a matter of law. To request a hearing, you must specifically make such request in your Answer, as discussed below.

156. The hearing you request regarding this Complaint will be held and conducted in accordance with the provisions of the "Consolidated Rules" a copy of which accompanies this Complaint.

157. If you request a hearing on the proposed penalty for Count III, members of the public who have exercised their right to comment, and to whom EPA is obligated to give notice of the proposed proceeding, will have a right under Section 311(b) (6) (C) (ii) of the CWA, 33 U.S.C. 1321(b) (6) (C) (ii), to present evidence for Count III. Under Section 311(b) (6) (C) of the Act, and in accordance with Section 22.45 of the Consolidated Rules, EPA is providing public notice of and reasonable opportunity to comment on the proposed assessment of an administrative penalty against Respondent for violations alleged in Count III. If a hearing is held on this proceeding, members of the

public who submitted timely comments on this proposed penalty shall have the right to be heard and present evidence at the hearing.

VIII. ANSWER & FILING OF DOCUMENTS

158. To avoid being found in default, you must file a written Answer to this Complaint with the Regional Hearing Clerk (E-19J) within 30 calendar days of your receipt of this Complaint. Her address is:

Regional Hearing Clerk, (E-19J)
U.S. EPA, Region 5,
77 West Jackson Boulevard,
Chicago, Illinois 60604,

In computing any period of time allowed under this Complaint, the day of the event from which the designated period runs shall not be included. Saturdays, Sundays, and Federal holidays shall be included, except when a time period expires on such, in which case the time period shall be extended to the next business day. You must file with the Regional Hearing Clerk the original and one copy of each document you intend as part of the record in this proceeding.

159. Your Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint, or must state clearly that you have no knowledge regarding a particular factual allegation which you cannot admit, deny, or explain, in which case the allegation will be deemed denied. Your Answer also shall specifically state:

- a. The circumstances or arguments which you allege constitute grounds for defense;
- b. The facts that you dispute or intend to place at issue;
- c. The basis for you opposing the proposed penalty; and

d. Whether you request a hearing as discussed above.

160. Failure to deny any factual allegation in this Complaint shall constitute admission of the alleged fact.

161. You must send a copy of your Answer and of any documents subsequently filed in this action to Richard Clarizio at:

Richard Clarizio, (C-14J),
U.S. EPA, Region V,
Office of Regional Counsel
77 West Jackson Boulevard
Chicago, Illinois 60604.

You may telephone Mr. Clarizio at (312) 886-0559.

162. If you fail to file a written Answer within 30 calendar days of your receipt of this Complaint, the Administrator of U.S. EPA may issue a Default Order. Issuance of a Default Order will constitute a binding admission of all allegations made in the Complaint and a waiver of your right to a hearing (40 CFR § 22.17). The civil penalty proposed herein shall become due and payable without further proceedings 30 days after the Default Order becomes the Final Order of the Administrator pursuant to 40 CFR §§ 22.27.

163. Failure to comply with an administrative penalty order subjects the Respondent to the provisions relating to the imposition of interest, penalty and enforcement expenses set forth at Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), for Counts I & II and Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), for Count III. Interest will accrue at a rate established pursuant to 26 U.S.C. § 6621(a)(2). The U.S. EPA will also impose

a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be a percentage (10 percent for non-payment of Counts I & II and 20% for Count III) of the aggregate amount of your outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter. You will be required to pay, in addition to all other penalties and interest, the United States' enforcement expenses, including, but not limited to, attorneys fees and costs incurred by the United States for collection proceedings. In such a collection proceeding, the validity, amount, and appropriateness of the administrative penalty assessed shall not be subject to review.

IX. SETTLEMENT CONFERENCE

164. Whether or not you request a hearing, you may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request a settlement conference, write to Richard Clarizio, Office of Regional Counsel (C-14J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, or telephone Mr. Clarizio at (312) 886-0559.

165. Your request for an informal settlement conference does not extend the 30 calendar day period during which you must submit a written Answer to this Complaint. You may pursue simultaneously the informal settlement conference and adjudicatory hearing processes. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because

such a conference is held. Any settlement that may be reached as a result of such a conference shall be embodied in a Consent Agreement and Final Order. Your agreement to a Consent Agreement and Final Order Assessing Administrative Penalties shall constitute a waiver of your right to request a hearing on any matter stipulated to therein.

166. Neither assessment nor payment of an administrative civil penalty shall affect your continuing obligation to comply with the CWA, RCRA or CAA, or any other Federal, State, or local law or regulation.

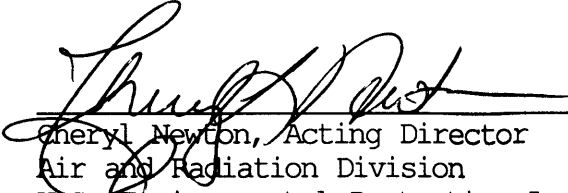
IN THE MATTER OF:

R & F Metals Company, Inc.
9101 West Fort Street
Detroit, Michigan 48209

) Docket No. _____
) Administrative Complaint pursuant
) to 42 U.S.C. § 7413 and 6928(a),
) and 33 U.S.C. § 1321

Date


3/29/01


Cheryl Newton, Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency,
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Date

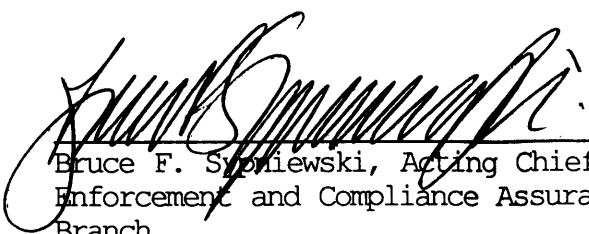
29 Mar 01

for


William E. Muno, Director
Superfund Division
U.S. Environmental Protection Agency,
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Date

3/29/01


Bruce F. Syniewski, Acting Chief
Enforcement and Compliance Assurance
Branch
Waste, Pesticides and Toxics Division
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

R & F Metals Company, Inc.
9101 West Fort Street
Detroit, Michigan 48209

Respondent

)
) Docket No. MM-5 - 2001-003
) CAA-5 - 2001-005
) CWA-5 - 2001-009
) RCRA-5 - 2001-005
) Proceeding to Assess Administrative Penalties
) under Section 113(d)
) of the Clean Air Act
) 42 U.S.C. § 7413, Section 3008(a)
) of the Solid Waste Disposal Act
) 42 U.S.C. § 6928(a) and Class II
) Civil Penalty under Section 311
) of the Clean Water Act,
) 33 U.S.C. § 1321.
)

CERTIFICATE OF SERVICE

I certify that on the date noted below, I filed the original and a copy of the Administrative Complaint with the Regional Hearing Clerk. I further certify that I provided to the U.S. EPA, Region 5 mail room a true and accurate copy of the Administrative Complaint and a copy of the attachments, including the "Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22, so that these documents could be placed into U.S. first-class, postage prepaid, certified mail, return receipt requested, to the following person at the address listed below:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jerome Robbins
President and Registered Agent
R & F Metals Company, Inc.
9101 W. Fort Street
Detroit, Michigan 48209

James T. Weiner, P.C.
30600 Telegraph Road
Suite 3350
Bingham Farms, Michigan 48025-4533

Timothy McGarry, Enforcement Unit Chief
Michigan Department of Environmental Quality
Air Quality Division
P.O. Box 30260
Lansing, Michigan 48909

Wendy Barrott, Director
Air Quality Management Division
Wayne County Department of Environment
640 Temple Street
Detroit, Michigan 48201

Gregory A. Moore, Program Coordinator
City of Detroit
Department of Environmental Affairs
Administration
660 Woodward Ave, Suite 1590
Detroit, Michigan 48226

3/30/01

Date

Shanee Rucker
Shanee Rucker, Secretary
AECAS (MI/WI)

7099 3400 00009592 4571
Certified Mail No.

MM-5- 2001-003

CAA-5- 2001-005

CWA-5- 2001-009

RCRA-5- 2001-005